

# **Combating Human Trafficking**

## **FAR 52.222-50 Clause and Remedies**

The FAR allows a variety of remedies if the Contractor fails to comply with FAR 52.222-50. The following table provides some of the most likely remedies, but it is not exhaustive. Contracting Officers should attempt to resolve compliance failures through communication of deficiencies with the Contractor. Compliance failures that are not quickly resolved should be addressed through remedies.

Contracting Officers have the authority and responsibility to make a final decision on any remedy. Decisions should always be based on adequate evidence and prefaced with consultation with Program Managers and Legal Counsel. Contractors should be advised of compliance failures and the intended remedy and offered an opportunity to respond with any additional information on mitigating factors. Contracting Officer decisions should be based on what action would serve the best interests of the Government considering program needs, the nature and extent of the infraction, and any Contractor mitigation. Contracting Officers are reminded to select the appropriate remedy for the severity of the infraction with program office and legal counsel consultation and to follow agency regulations, policies, and procedures in implementing the remedy.

<b>Remedy</b>	<b>Considerations</b>
<b>Include the Violation in the Contractor's Past Performance Evaluation</b>	<ul style="list-style-type: none"><li>• A Trafficking in Persons (TIP) clause violation could be an indication of an unethical Contractor.</li><li>• Contracting Officers must determine that Contractors are responsible, including possessing good business ethics each time a contract is awarded.</li><li>• Contracting Officers and other acquisition personnel can use the past performance information in awarding future contracts.</li><li>• Contracting Officers should consider a statement under a past performance evaluation when a Contractor violation has not been expeditiously resolved and whenever the violation is severe enough to warrant a more stringent remedy.</li></ul>
<b>Required Removal of Contractor or Subcontractor Employee(s) from the Contract</b>	<ul style="list-style-type: none"><li>• FAR 52.222-50 allows the Government to require the prime to remove a Contractor or subcontractor employee from performing on the contract.</li><li>• This may be the most appropriate and direct remedy for employee procurement of a commercial sex act.</li></ul>

<b>Termination for Convenience of the Contract or Subcontract</b>	<ul style="list-style-type: none"> <li>• FAR 52.222-50 allows the Government to require the prime Contractor to terminate a subcontractor, and allows the Government to terminate a prime Contractor.</li> <li>• This may be the best remedy where the subcontractor is performing with a trafficked workforce. Substitution of a non-trafficked workforce will send a clear message that labor trafficking is not economically viable.</li> <li>• A termination for convenience based on this contract clause could allow the Contractor to receive some payment. Extensive or repetitive violations should be considered for termination for default discussed below.</li> </ul>
<b>Suspension of Contract Payments</b>	<ul style="list-style-type: none"> <li>• The Government is entitled to performance of the contract by an appropriate, non-trafficked workforce and compliance with the requirements of the clause. Suspension of payment should be considered under the appropriate contract type and circumstances when the Contracting Officer receives adequate evidence that payments would support a trafficked workforce or the Contractor fails to respond to Contracting Officer direction to correct TIP clause violations.</li> <li>• Suspension of payments should be in writing with a summary of the allegation included.</li> <li>• The payment office and program office should be advised of the suspension of payments.</li> </ul>
<b>Loss of Award Fee</b>	<ul style="list-style-type: none"> <li>• FAR 52.222-50 allows award fees to be decremented for violations of the clause.</li> <li>• It is easiest to use this remedy to address violations if trafficking in persons or related business ethics issues are included as part of the award fee criteria.</li> <li>• Contracting Officers should consider a specific inclusion in the Award Fee Plan where performance will be in circumstances or locations with a history of TIP compliance problems.</li> </ul>
<b>Termination for Default</b>	<ul style="list-style-type: none"> <li>• Default is a severe remedy that should be used where the violation is deliberate, systematic, and/or extensive. Default is appropriate where the violations are clear, extensive, and/or repetitive.</li> <li>• FAR 52.222-50 allows the Contracting Officer to use this extreme remedy when appropriate.</li> </ul>
<b>Suspension or Debarment</b>	<ul style="list-style-type: none"> <li>• The Government only deals with responsible Contractors with satisfactory business ethics. Systematic, extensive and/or deliberate violations of trafficking in persons requirements may indicate a Contractor who lacks business integrity.</li> <li>• Contracting Officers should refer all potential trafficking cases and may refer violations of FAR 52.222-50 to the Agency Office of Inspector General for investigation.</li> <li>• Contracting Officers should also advise the Agency Debarment and Suspension Officials (SDO) of trafficking in</li> </ul>

	<p>persons violations along with a recommendation on whether the violations are extensive enough for the Contracting Officer to recommend suspension or debarment.</p> <ul style="list-style-type: none"><li>• Suspension is an immediate action taken by the SDO, based on adequate evidence, to protect the Government by prohibiting a Contractor or subcontractor from receiving new awards for a set period of time.</li><li>• Debarment is a longer process taken by the SDO, based on a preponderance of evidence, to protect the Government by prohibiting the Contractor or subcontractor from receiving new awards for a period of time.</li></ul>
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